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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,791	06/28/2001	Takehiko Shioda	041514-5128	9634
55694 7590 02/22/2008 DRINKER BIDDLE & REATH (DC) 1500 K STREET, N.W. SUITE 1100 WASHINGTON, DC 20005-1209			EXAMINER SHIBRU, HELEN	
			ART UNIT 2621	PAPER NUMBER
			MAIL DATE 02/22/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/892,791	SHIODA ET AL.	
	Examiner	Art Unit	
	HELEN SHIBRU	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 13-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/05, 11/07, 11/05, 10/01</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election without traverse in the reply filed on 12/21/2007 is acknowledged.

Applicant elected figure 1 and fig. 6 (subspecies 1.1A) and elects claims 1-9, 11-20, 22-26 and 30. However based on the elected species and subspecies claims 13-20, 22-26, and 30 are reads on the nonelected species and sub species (for e.g. figure 25 which teaches combination operation), and therefore, claims 13-20, 22-26 and 30 are withdrawn from consideration. The Office mailed out an Election/restriction three times and briefly stated how applicant can make an election (see the First Office Action mailed on 01/25/2007, for example, which provided an example of how the election should be made). Therefore the restriction is now made final and Applicant has the right to file a divisional application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5, 7-8, and 11-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Yoda (US Pat. No. 6,993,567).

Regarding claim 1, Yoda discloses a storage medium for recording incomplete information data obtained by omitting some data from complete information

data which provide complete information (see col. 1 lines 26-62. The desired music program are selected from the music program distributing server, which has a complete data, and recorded in optical disc. See also col. 10 lines 8-41).

Regarding claim 2, Yoda discloses the complete information data is PCM music data (see col. 1 lines 19-32 and col. 10 lines 29-40).

Regarding claim 3, Yoda discloses the complete information data is music data obtained by compressing PCM music data (see col. 1 lines 19-24 and 10 lines 50-65).

Regarding claim 4, Yoda discloses the complete information data is divided into a plurality of first amount of data, and the incomplete information data is a series

of data, each of which is a remainder obtained by subtracting a second amount of data from the first amount of data, with the second amount of data being smaller than the first amount of data (see col. 1 lines 26-62 and col. 10 lines 8-41. The music program distributing server includes a plurality of music data and various information associated with the music program data. The user selects a series of desired music programs out of the first amount of data located in the server. Therefore it is inherent that the incomplete data is a remainder obtained by subtracting unselected data from the complete data located in the server).

Regarding claim 5, Yoda discloses the incomplete information data is a series of data, each of which is a remainder obtained by randomly excluding an unspecified amount of data from the complete information data (see col. see col. 1 lines 26-62 and col. 11 lines 17-31. The user can select desired data randomly excluding undesired data from the music program distributing server which includes a plurality of data).

Regarding claim 7, Yoda discloses the complete information data is MPEG4 audio TwinVQ music data, and the incomplete information data is data obtained by excluding spectrum envelope and quantization information from the MPEG audio TwinVQ music data (see col. 9 lines 19-48).

Note to the Applicant: The USPTO considers the Applicant's "or" language to be anticipated by any reference containing one of the subsequent corresponding elements.

Regarding claim 8, Yoda discloses the complete information data is MP3 (MPEG-1/Audio Layer 3) music data, and the incomplete information data is data obtained by excluding side information or Huffman table selection information, which is part of the side information, from the MP3 music data (see col. 5 line 35-col. 6 line 63).

Regarding claim 11, Yoda discloses the storage medium including represents an acquisition source of complementary information data adapted to complement the incomplete information data thereby restoring the complete information data (see fig. 6 and col. 10 lines 8-31).

Regarding claim 12, Yoda discloses each of the incomplete information data and complementary information data has a file format that possesses a header portion representing a data omitting method, a data size and a file name (see figures 3, 4, 5 and col. 8 line 32-col. 9 line 65).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoda in view of Official Notice.

Regarding claim 6, although Yoda does not specifically disclose the complete information data is MPEG information data, and the incomplete information data is data obtained by excluding an I frame from the MPEG information data, Official Notice is taken that it is well known to exclude an I frame from MPEG information data. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yoda by omitting an I frame in order to reduce data volume.

Regarding claim 9, although Yoda does not specifically disclose the complete information data is ACC (MPEG-2/Advanced Audio Coding (ISO/IEC Standard 1381807)) music data, and the incomplete information data is data obtained by excluding Huffman table selection information from the ACC music data, Official Notice is taken that it is well known in the art to obtain incomplete information data by excluding Huffman table selection information from ACC music data. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yoda by excluding Huffman table selection information from ACC in order to reduce the traffic of communications and the time required for downloading.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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7. Claims 1-9, 11 and 12 are rejected under 35 U.S.C. 101 because the claims are directed to a recording medium storing nonfunctional descriptive material.

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are neither physical "things" nor statutory processes. See, e.g. Warmerdam, 33 F. 3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory) and merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make it statutory. In addition a mere arrangements or compilations of facts or data, are merely stored so as to be read or outputted by a computer without creating any functional interrelationship either as part of the stored data or as part of the computing processes performed by the computer then such descriptive material alone does not impart functionality either to the data as so structured, or to the computer, and therefore are not statutory. See MPEP 2106.IV.B.1.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fukuda et al. US PG PUB 2003/0056636 A1.

Kajiwara et al. US Pat. No. 5,945,930.

Morohashi et al. US Pat. No. 6,721,768.

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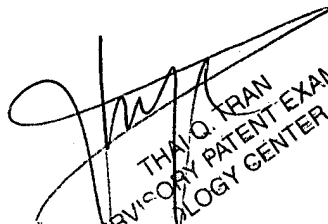
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELEN SHIBRU whose telephone number is (571) 272-7329.

The examiner can normally be reached on M-F, 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on (571) 272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Helen Shibru
February 13, 2008


THAI Q. TRAN
SUPERVISORY PATENT EXAMINER
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